

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

OFFICE COPY

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1970.

NO 6 SPECIAL CALENDAR, 618

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
JAY J. MORROW, COMMISSIONERS OF THE DISTRICT
OF COLUMBIA, APPELLANTS,

vs.

SIDNEY BIEBER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED NOVEMBER 28, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1909.

No. 1970.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
JAY J. MORROW, COMMISSIONERS OF THE DISTRICT
OF COLUMBIA, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA UPON THE
RELATION OF SIDNEY BIEBER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1970.

HENRY B. F. MACFARLAND ET AL., Appellants,
vs.
SIDNEY BIEBER.

a Supreme Court of the District of Columbia.

No. 50904. At Law.

THE UNITED STATES OF AMERICA upon the Relation of SIDNEY
BIEBER, Petitioner,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW,
Commissioners of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1

Petition.

Filed September 4, 1908.

In the Supreme Court of the District of Columbia, Holding a
Circuit Court.

No. 50904. At Law.

THE UNITED STATES OF AMERICA upon the Relation of SIDNEY
BIEBER, Petitioner,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW,
Commissioners of the District of Columbia.

To the Supreme Court of the District of Columbia:

Your petitioner, Sidney Bieber, shows as follows:

1st. That he is a citizen of the United States and a resident of
the District of Columbia.

2nd. That heretofore, to wit: on or about the 1st day of July, 1901, he was appointed a fireman in the Fire Department Service of the District of Columbia, and duly qualified as such fireman, and thereafter served as such for more than four years, and until, to wit: August 30, 1905, when by reason of disease contracted in the line of actual fire duty, in going to, at and returning from a fire, he became so permanently disabled as to be discharged from such service therefor, by the then Commissioners of the District of Columbia.

2 Your petitioner further shows that at the time of his said discharge from such service as aforesaid, he held the position of Fire Marshal, which said position was above the rank of Captain in such service, and upon his discharge from such service, the then Commissioners of the District of Columbia granted your petitioner, as lawfully they might, a pension, so called, of ninety dollars a month payable from the Fireman's Relief Fund, and duly entered upon their records an order to that effect, and your petitioner has ever since that time until the passing of the unlawful order hereinafter recited, received such pension: Payments of such pension have been regularly made upon the 4th day of each month, and the last payment this petitioner has received was made him on August 4, 1908, and for the month of July, 1908.

Your petitioner attaches hereto copies of his application for retirement from such service as fireman; of the medical report submitted to the said Commissioners; of the report of the Chief Engineer of the Fire Department; the letter of the Commissioners to your petitioner advising him of their acceptance of his resignation, and their order providing for the payment of the pension aforesaid, all of which it is prayed may be read as part hereof.

3rd. Your petitioner further shows that a payment of the said monthly stipend of ninety dollars became due and payable to him, according to the practice of the Commissioners of the District of Columbia, on September 4, 1908, and for the month of August, 1908, and he duly applied for and demanded the same, but payment was refused, and the said Commissioners of the District of Columbia continue to refuse such payment, and on, to wit: the 29th day of July, 1908, entered upon their records and duly promulgated an order discontinuing in whole the pension so payable to your petitioner, such order to take effect on and after August 1, 1908. And petitioner says that he is informed and believes that in passing said order the Commissioners aforesaid, who are the said Henry B. F. Macfarland, Henry L. West and Jay J. Morrow, assumed to act under a provision of a certain Act of Congress entitled "An Act making appropriations to provide for the expenses of the Government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and nine and for other purposes" approved May 26, 1908, which provision is as follows:

"That within thirty days after the passage of this Act, and every two years thereafter, persons on the pension rolls in the District of Columbia for disabilities incurred while in the service of the police department or fire department of the District of Columbia shall undergo a medical examination, and as a result of such examinations

the Commissioners shall determine whether the pension being paid in each case shall continue in whole or in part.

4th. Your petitioner further shows that at the time he became a fireman there was in force a certain Act of Congress duly approved June 11, 1896, (29 Stat. at L. p. 405) which, *inter alia*, provided as follows:

"That hereafter the Commissioners of the District of Columbia shall deduct one dollar per month from the pay of each fireman, which fund so deducted shall be kept as a fireman's relief fund and be invested in United States or District bonds, and held in the manner provided by existing law in respect to the policeman's fund, and shall be used for the relief of any fireman, who having served not less than twelve months, shall by reason of injuries received or disease contracted in the line of actual duty, going to, at, or returning from a fire, or having served not less than fifteen years shall become so permanently disabled as to be discharged from service therefor."

And there was in force a certain later Act of Congress, approved March 3, 1901, (31 St. L. p. 1020), which, *inter alia*, provided that the provisions of the said last quoted Act might, within the discretion of the Commissioners of the District of Columbia, be extended to and used for the relief of any fireman or his family although he might not have served twelve months.

And there was also in force a certain other Act of Congress, approved March 1, 1905, (33 Stat. L. p. 821), which among other things, provided "That the Chief Engineer of the fire department and all other officers of said department of and above the rank of Captain * * * in case of retirement as now provided by law shall receive relief not exceeding one hundred dollars per month." * * *

Your petitioner is advised by counsel that all of the said Acts of Congress above referred to and recited were in full force and effect at the time of his retirement and discharge as aforesaid, and it was by authority of such Acts that the Commissioners of the District of Columbia adjudged to him the pension aforesaid. He further avers that during the whole of his term of service as a fireman as aforesaid there was deducted from his pay as such fireman one dollar per month as a part of the fireman's relief fund established by said Acts.

Your petitioner is advised by counsel and so avers that by reason of the fact that the Commissioners of the District of Columbia found your petitioner so permanently disabled from disease contracted in the line of actual fire duty, going to, at or returning from a fire, as to discharge him from service therefor, and awarded him the pension aforesaid, under the authority of the law aforesaid, the right of your petitioner to be paid said monthly sum of ninety dollars became and was finally fixed and concluded, and it was incompetent for the said Commissioners thereafter to review the judgment of their predecessors in office and to deprive your petitioner of the pension so as aforesaid adjudged to him at the time of his discharge as aforesaid, and that his right to receive said monthly pension, so long as the fireman's relief fund shall not be deficient, became and was a vested right of property in him of which he may

not be lawfully deprived and that the said order of the said Commissioners discontinuing said pension is null and void. And your petitioner avers that said fireman's relief fund is not deficient and is sufficient to pay all pensions and other charges heretofore awarded to be paid therefrom.

The premises considered your petitioner prays that the writ of peremptory mandamus may issue requiring the defendants, Henry B. F. Macfarland, Henry L. West and Jay J. Morrow, Commissioners of the District of Columbia, to restore the name of your petitioner to the pension roll of the firemen's relief fund at the rate of ninety dollars per month, and to pay to him from such fund, the pension payable to him for the month of August, 1908, as aforesaid; And to this end that a rule may be laid upon said Commissioners requiring them to answer this petition; and that all other proper and necessary orders may be made in the premises.

And your petitioner will ever pray &c.

SIDNEY BIEBER.

BIRNEY & WOODARD,
Counsel for Petitioner.

6 DISTRICT OF COLUMBIA, ss:

I, Sidney Bieber, on oath say that I have heard read the foregoing petition by me signed, and know the contents thereof; that the statements therein made of my own knowledge are true, and those made on information and belief, I believe to be true.

SIDNEY BIEBER.

Sworn to before me this 4th day of September, 1908.

[SEAL.]

LOUIS OTTENBERG,
Notary Public, D. C.

7

FORT STANTON, N. M., *August 21, 1905.*

50904.

To the Honorable Commissioners, District of Columbia.

GENTLEMEN: I have the honor to request that I be retired from the District of Columbia Fire Department and placed upon the pension roll thereof; same to take effect after the 31st instant.

It is with deep and profound regret that I am compelled to pursue this course, but my health has become so impaired by disease, contracted in the line of duty, that I fear that I will not again be able to perform the duties of my office.

I assure you, gentlemen, that it is with reluctance that I am forced to take this step, as, when in health, the duties of my office were indeed pleasures and it is only after consulting with, and on the advice of Dr. P. M. Carrington, Surgeon in Command of the Fort Stanton Sanatorium, the physician in charge of my case, that I ask to be retired.

I wish to thank the members of your Honorable Board for the hearty support and co-operation given me; and to the Chief Engineer, the officers and members of the Fire Department I extend my

heartfelt thanks for the support and assistance which I have received from them.

Very Respectfully,

SIDNEY BIEBER,
Fire Marshal.

1 inclosure (certificate of Dr. Carrington).

8 Public Health and Marine Hospital Service,
Office of Medical Officer in Command.

FORT STANTON, N. M., *August 21, 1905.*

50904.

The Honorable Board of Commissioners, District of Columbia.

GENTLEMEN: This is to certify that Mr. Sidney Bieber, fire marshal of the District of Columbia, is now suffering from tuberculosis of the lungs and under my professional care. The history of his case warrants the opinion that this disease was contracted by reason of exposure and over-work at the time of the great fire in Baltimore

When he arrived here there was in addition to the lung involvement also tuberculosis disease of the larynx. The latter has to a considerable degree cleared up. In my opinion it would be unwise for him to resume his duties as fire marshal; indeed I must advise him against returning to Washington as a permanent place of residence, even after fully recovering. While his ultimate recovery seems a reasonable certainty considerable time must be devoted to the cure and it will be advisable that he should live a hygienic out of door life after I discharge him from treatment. A return to Washington and the resumption of his duties as fire marshal at this time could easily, and most probably would, undo all the benefits which he has now received from treatment in this Sanatorium.

I give this certificate with regret knowing that Mr. Bieber desires to return to duty, but I am convinced that his case is one
9 which should properly come under the requirement and pension clause of the laws and regulations governing the Fire Department of the District.

Respectfully,

P. M. CARRINGTON,
Surgeon in Command.

10 Headquarters of the Fire Department,
District of Columbia.

WASHINGTON, *August 29, 1905.*

50904.

To the Honorable Commissioners, District of Columbia.

GENTLEMEN: I have the honor to transmit herewith application for retirement of Fire Marshal Sidney Bieber with the recommendation that Mr. Bieber be retired at his own request, and pensioned by this Department.

Accompanying is certificate of Dr. P. M. Carrington Surgeon in Command of the Marine Hospital at Fort Stanton, N. M., stating

that Mr. Bieber's physical condition is such that he will have to remain away from Washington, D. C., for a very long time after his recovery and also advising against his return to this City for his permanent residence.

In forwarding the resignation of Mr. Bieber I have the honor to state that during his term of service as assistant and Fire Marshal of this city, Mr. Bieber has proven to be one of the most honest, upright and faithful officers that this department ever had. He worked early and late, never shirking his duty and it is with deep regret that I am compelled to depart with so faithful a man.

On February 7, 1904, Mr. Bieber accompanied me to Baltimore, Md., on the occasion of the big fire there and it was there that he contracted the disease that has resulted so that he is compelled
11 to ask to be retired and I therefore have the honor to recommend that he be retired and pensioned on \$90.00 per month, retirement to take effect the 31st instant and pension to begin September 1, 1905, and that your Honorable Board convey to him by letter words of commendation for the faithful and intelligent services he has rendered the department and the city.

I have the honor to further recommend that Captain Philip W. Nicholson acting fire marshal, be promoted to be fire marshal, vice Bieber retired. Captain Nicholson was detailed as assistant fire marshal September 2, 1903, and acting fire marshal October 17, 1904, and during his term of office has proven as well a man fully competent in every particular to perform the duties of the fire marshal and he has rendered the department and city valuable services.

I also recommend that Lieutenant Anthony J. Moshuevel be promoted to be Captain, vice Nicholson; that Private Thomas B. Stanton be promoted to be Lieutenant, vice Moshuevel; that Senior Watchman Albert J. Greiner be promoted to be private, vice Stanton, and that John E. Mastin be appointed watchman, vice Greiner, appointment and promotions to take effect September 1, 1905.

Very Respectfully,

WM. F. BELT,
Chief Engineer.

L.

Fire Marshal Bieber's Record.

July 1, 1901, appointed private and assigned assistant fire marshal.
January 24, 1902, promoted to be fire marshal.

12

AUGUST 31, 1905.

50904

Sidney Bieber, Esq., Fort Stanton, New Mexico.

DEAR SIR: The Commissioners consider it a matter of deep regret that your continued illness, contracted in the line of duty, should have made your retirement inevitable and they are constrained to accept your resignation as Fire Marshal of the District of Columbia.

The Commissioners desire to express their appreciation of your valuable services to the District of Columbia, and they feel that the

loss of a man of such a high character, who, as an official has shown competency and judgment, will be distinctly felt by the Government of the District of Columbia and the community in general.

The Commissioners have ordered that you will hereafter be allowed a pension of \$90.00 a month from the Fireman's Relief Fund; pension to take effect on and after September 1st, 1905.

The Commissioners offer you their highest regards and best wishes for your future welfare.

Very Respectfully,

HENRY B. F. MACFARLAND,
*President of the Board of Commissioners
of the District of Columbia.*

13

Executive Office,
Commissioners of the District of Columbia,
Washington.

AUGUST 30, 1905.

50904

Ordered:

That Sidney Bieber, Fire Marshal, is hereby removed, to take effect from and after the 31st instant, and that said Bieber is allowed a pension of \$90 a month, payable from the Fireman's Relief Fund; pension to take effect on and after September 1, 1905.

Official copy furnished Mr. Bieber.

By order,

WM. F. MEYERS,
Acting Secretary.

14

Rule to Show Cause.

Issued September 8, 1908.

In the Supreme Court of the District of Columbia, Holding a Circuit Court.

No. 50904. At Law.

THE UNITED STATES OF AMERICA *ex Rel.* SIDNEY BIEBER, Petitioner,
vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW,
Commissioners of the District of Columbia.

Upon consideration of the petition of Sidney Bieber it is this 8th day of September, 1908, ordered that Henry B. F. Macfarland, Henry L. West, and Jay J. Morrow, Commissioners of the District of Columbia, show cause, if any they have, on the 15th day of September, 1908, why the writ of mandamus prayed for by said petitioner should not be allowed, provided that a copy of this order be served upon the said Commissioners, through their President, on or before the 10th day of September, 1908.

ASHLEY M. GOULD,
By the Court.

Marshal's Return.

15 Served copy of the within order, together with copy of the petition in this cause, on the Commissioners of the District of Columbia by service on Henry B. F. Macfarland president.
Sept. 8, 1908.

AULICK PALMER, *Marshal*.
S.

Answer.

Filed October 23, 1908.

In the Supreme Court of the District of Columbia, Holding a Circuit Court.

At Law. No. 50904.

THE UNITED STATES OF AMERICA *ex Rel.* SIDNEY BIEBER, Petitioner,
vs.
HENRY B. F. MACFARLAND ET AL., Commissioners of the District of Columbia.

To the Supreme Court of the District of Columbia:

The Answer of the respondents, Henry B. F. Macfarland, Henry L. West and Jay J. Morrow, Commissioners of the District of Columbia to the rule to the petition and the rule to show cause in the above entitled suit respectfully shows as follows:

1st. They admit the allegations contained in the first paragraph of the petition.

16 2nd. They admit the allegations contained in the second paragraph of said petition, except that they deny the passing of any unlawful order in respect to the petitioner and further they aver that the disability leading to the discharge of the petitioner was of so permanent a nature as to entitle him to be discharged from the service, but they deny that he was found to be permanently disabled as a matter of fact, except in so far as he was entitled to the said discharge.

3rd. These respondents deny that the payment of ninety dollars (\$90.00) became due and payable to the petitioner on September 4, 1908 for the month of August, 1908. These respondents admit that on the 29th day of July, 1908 they duly promulgated an order discontinuing the pension in whole theretofore paid to the petitioner herein, a copy of the said order which was the legal action of these respondents in so far as the same affects the petitioner is hereto annexed as "Exhibit A," and prayed to be read as a part of this answer.

Your respondents aver that in pursuance with the provisions contained in the Act of Congress, approved May 26, 1908 and set out in the third paragraph of the petition herein they passed an order

on the 29th day of May, 1908, a copy of which is hereto annexed and marked "Exhibit B" and prayed to be read as a part of this answer. These respondents further aver that thereupon the said Board of Police and Fire Surgeons gave due notice to the petitioner herein to appear before them for examination in accordance with the provisions of the said Act of Congress, a copy of said notice is hereto annexed marked "Exhibit C" and prayed to be read as
17 a part of this answer; that the said notice was duly received by the said petitioner, Sidney Bieber, who failed at the time appointed, or at any other time within the said thirty days set out in the provisions of the Act, to appear for examination as provided; that said Sidney Bieber the petitioner herein was in communication with the various members of the said Board of Police and Fire Surgeons after the receipt of said notice in respect to the date of his examination, but at no time did he present himself to said Board of Police and Fire Surgeons. That upon the conclusion of the duties of the said examining Board, the results of their examinations were duly transmitted to the Commissioners of the District of Columbia by letter of transmittal accompanying the report in each of ninety-four cases certified to them for examination. A copy of the report of the said Board of Police and Fire Surgeons in the case of the petitioner herein is hereto annexed marked "Exhibit D" and prayed to be read as a part of this answer. These respondents further aver that upon the receipt of the report of said Board of Police and Fire Surgeons, acting in accordance with the provisions of the Act of May 26, 1908 as they were authorized under law to do, determine that the pension theretofore paid to the petitioner should be disallowed in whole, and the action of the Board of Commissioners under date of July 29, 1908 as heretofore set out and made a part of this answer was duly transmitted to the said petitioner Sidney Bieber.

These respondents admit the Acts of Congress set out in the fourth paragraph of this petition, but call for a reading of the
18 Statutes themselves for a more certain knowledge of their terms.

Further answering said fourth paragraph, these respondents deny that they have ever found or that their predecessors have ever found the petitioner herein permanently disabled from disease. They aver that the certificate of Doctor P. M. Carrington, a copy of which is attached to the petition in this case, does not set out any permanent disability from disease, but only such a permanent disability as to entitle the petitioner to discharge from the service by virtue of his then existing physical condition. These respondents deny that it was incompetent for them to review the judgment of their predecessors in office and to deprive the petitioner of his pension. On the contrary, they aver that by the Act of Congress it was their duty to cause the petitioner to be examined in accordance with the terms of said Act within the time prescribed therein, and upon the failure or refusal to be so examined, to determine whether the pension should continue in whole or in part. These respondents deny there was any vested right of property in the petitioner in respect to the pension heretofore granted him, or that the order discontinuing said

pension is in any way null or void. These respondents aver that all the actions taken by them and orders made by them in carrying out the provisions of the Act of Congress, approved May 26, 1908, have been legal and proper, and they deny that the petitioner herein is entitled to the payment of any amount as pension money or to the restoration of his name to the pension roll of the Firemen's Relief Fund.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JAY J. MORROW,

Commissioners of the District of Columbia.

E. H. THOMAS,
Attorney for Respondents.

19 DISTRICT OF COLUMBIA, ss:

Personally appears Henry B. F. Macfarland, who upon oath says, that he is President of the Board of Commissioners of the District of Columbia, and that he has read the foregoing answer, and that the facts therein stated are true to the best of his official knowledge and belief.

HENRY B. F. MACFARLAND.

Subscribed and sworn to before me this 9th day of October, A. D. 1908.

[SEAL.]

WILLIAM TINDALL,
Notary Public, D. C.

20

EXHIBIT "A."

Executive Office,
Commissioners of the District of Columbia,
Washington.

JULY 29, 1908.

Ordered:

That, acting under authority of law conferred in Public Act # 139, First Session, Sixtieth Congress, approved May 26th, 1908, the Commissioners of the District of Columbia discontinue in whole the pensions now paid to Charles Bartel, H. A. Quail and L. E. Wright on the Police Department pension roll, and S. Bieber, on the Fire Department pension roll, said persons having failed to obey the mandatory provision of law which directed that they should undergo a medical examination within thirty days after the passage of the Act above named.

* * * And that this order take effect on and after August 1st, 1908.

Official copy furnished.

By order:

W. TINDALL, *Secretary.*

Aud.

P. D.

F. D.

Pensioners named.

File.

Dis. O.

Collector of Taxes.

Aud. State.

21

EXHIBIT "B."

L. R. 251,232-2 C. O.

Executive Office,
Commissioners of the District of Columbia,
Washington.

MAY 29, 1908.

Ordered:

That in order to comply with the following provision in the Act "Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and nine, and for other purposes," approved May 26, 1908,—

Provided, That within thirty days after the passage of this Act and every two years thereafter persons on the pension rolls in the District of Columbia for disabilities incurred while in the service of the police department or fire department of the District of Columbia shall undergo a medical examination and as a result of such examinations the Commissioners shall determine whether the pension being paid in each case shall continue in whole or in part, the Board of Police and Fire Surgeons shall conduct the medical examination therein prescribed; and said Board shall be furnished by the Auditor with a list of all persons drawing pensions for disabilities, and shall notify all such persons to appear before the Board at the time and place to be specified in the notice.

22

Official copy furnished.

By order:

W. TINDALL,
Secretary, Board of Commissioners, D. C.

J.

Aud.

F. D.

P. D.

Board of Police and Fire Surgeons.

File.

23

EXHIBIT "C."

J. S. Wall, M. D.

Alfred Richards, M. D.

W. H. R. Brandenburg, M. D.

Edmund Barry, M. D., Secretary, 201 East Capitol Street.

Board of Police and Fire Surgeons,
District of Columbia.

WASHINGTON, D. C., June 5, 1908.

Sidney Bieber, 630 G St. S. E., Washington, D. C.

SIR: The "Act making appropriations to provide for the expenses of the Government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and nine, and for other

purposes," approved May 26, 1908, contains the following provision:

Provided, That within thirty days after the passage of this Act, and every two years thereafter, persons on the pension rolls in the District of Columbia for disabilities incurred while in the service of the police department or fire department of the District of Columbia shall undergo a medical examination, and as a result of such examinations the Commissioners shall determine whether the pension being paid in each case shall continue in whole or in part.

In compliance with this law the Commissioners of the District of Columbia have directed the Board of Police and Fire Surgeons to conduct the medical examination required by the statute, and for the purpose of undergoing such medical examination you are requested to appear at the room in the Police Court building known as the Police Trial room, on June 19, 1908, at 1.30 o'clock P. M.

Very respectfully,

EDMUND BARRY, M. D.,
Secretary Board of Police and Fire Surgeons.

Bring this notice with you.

24

EXHIBIT D.

Name, S. Bieber.

Address, 630 G Str., S. E., D. C.

Department, Fire.

Date of Appointment.....

Date of Retirement, Sept. 1, 1905.

Length of Service, 4 years, 2 mo.

Pension { Amount originally granted, \$90.00.
 { Date and amount of increase, if any.....

Is Pensioner, at present, in receipt of income from business or employment?

If so, state character of business or employment, and amount of income

Nature of disability for which pension was granted:

Tuberculosis.

State circumstances under which disability was determined, whether by examination and certification by Board of Police and Fire Surgeons, or recommendation of superior officer, stating name of such officer, or by other action.

25

Report of Board of Police and Fire Surgeons as to result of such medical examination, showing present physical condition. (This report should be detailed and complete in order that "as a result of such examinations the Commissioners shall determine whether the pension being paid in each case shall continue in whole or in part" as required by law.)

Pensioner was notified to appear before the Board of Surgeons, but failed to do so.

[Endorsed:] — Department. Name, ——. Address, ——. Date of examination, —.

26

Demurrer to Answer.

Filed October 30, 1908.

In the Supreme Court of the District of Columbia, Holding a
Circuit Court.

No. 50904. Law.

UNITED STATES OF AMERICA *ex Rel.* SIDNEY BIEBER, Petitioner,
vs.

HENRY B. F. MACFARLAND ET AL.

The petitioner says the answer of the respondents to the petition
and to the rule to show cause is bad in substance.

BIRNEY & WOODARD,
Att'ys for Petitioner.

NOTE.—One of the matters intended to be argued is that said
answer shows no lawful ground for the action of the Commissioners
in removing the name of the relator from the pension roll.

27

Supreme Court of the District of Columbia.

FRIDAY, October 30th, 1908.

Session resumed pursuant to adjournment, Hon. Harry M. Cla-
baugh, Chief Justice, presiding.

* * * * *

No. 50904. At Law.

THE UNITED STATES OF AMERICA upon the Relation of SIDNEY
BIEBER, Petitioner,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JAY J. MORROW,
Commissioners of the District of Columbia, Respondents.

This cause came on to be heard upon the petition filed herein, the
Rule to Show Cause issued thereon September 8th, 1908, the answer
of respondents and exhibits thereto and the demurrer to said answer;
whereupon, after argument thereon by attorneys for the respective
parties herein, the same is submitted to the Court for consideration;
thereupon, it is adjudged and ordered that the said demurrer be,
and the same is hereby sustained, and that the prayers of the peti-
tion herein be, and hereby are granted. Further it is considered
and adjudged that the petitioner herein recover of respondents
herein the costs of suit, to be taxed by the Clerk, and have execution
thereof.

14 HENRY B. F. MACFARLAND ET AL. VS. SIDNEY BIEBER.

28 *Order for Appeal and Citation.*

Filed November 3, 1908.

In the Supreme Court of the District of Columbia, the 3d Day of November, 1908.

At Law. No. 50904.

U. S. *ex Rel.* SIDNEY BEIBER

vs.

HENRY B. F. MACFARLAND ET AL.

The Clerk of said Court will enter an appeal by the respondents herein from the order of the court sustaining the demurrer to the answer and granting a writ of mandamus against the respondents; and the clerk will please issue a citation on this appeal.

E. H. THOMAS,

F. H. S.,

Attorney for Respondents.

29 Filed Nov. 4, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

At Law. No. 50904.

THE UNITED STATES OF AMERICA *ex Rel.* SIDNEY BIEBER

vs.

HENRY B. F. MACFARLAND ET AL.

The President of the United States to Sidney Bieber, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal by respondents in the Supreme Court of the District of Columbia, on the 3d day of November, 1908, wherein Henry B. F. Macfarland, Henry L. West and Jay J. Morrow, Commissioners of the District of Columbia, are Appellants, and you are Appellee, to show cause, if any there be, why the Judgment rendered against the said Appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 3d day of November, in the year of our Lord one thousand nine hundred and eight.

JOHN R. YOUNG, *Clerk.*

Service of the above Citation accepted this 3d day of November, 1908.

A. A. BIRNEY,

L. P.,

Attorney for Appellee.

[Endorsed:] No. 50904. Law. U. S. *ex rel.* Sidney Bieber *vs.* Henry B. F. Macfarland *et al.* Citation. Issued Nov. 3, 1908. Filed Nov. 4, 1908. J. R. Young, Clerk. E. H. Thomas, Attorney for Appellant.

30 *Directions to Clerk for Preparation of Transcript of Record.*

Filed November 5, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50904.

UNITED STATES *ex Rel.* SIDNEY BEIBER

v.

HENRY B. F. MACFARLAND ET AL.

The clerk of the Court will please prepare a transcript of the record for the Court of Appeals, in the above case, consisting of:

1. The petition & exhibits.
2. The rule to show cause.
3. The answer of the respondents and exhibits.
4. The demurrer to the answer.
5. The order sustaining the demurrer and granting a mandamus.
6. The appeal and order for citation.
7. The citation and acceptance of service.
8. This order for a transcript.

E. H. THOMAS,
Attorney for Respondents.

The above designation for a transcript is satisfactory, and service of a copy thereof is accepted this 4th day of Nov., 1908.

A. A. BIRNEY,
Attorney for Relator.

31 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 30, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 50904 at Law, wherein The United States of America, upon the relation of Sidney Bieber, is Petitioner, and Henry B. F. Macfarland, *et als.* are Respondents, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of November, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1970. Henry B. F. Macfarland *et al.*, appellants, *vs.* Sidney Bieber. Court of Appeals, District of Columbia. Filed Nov. 28, 1908. Henry W. Hodges, clerk.